IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 37 OF 2004.

S T A T E
Through Public Prosecutor,
Panaji, Goa. ... Appellant.

VERSUS

Rohidas Gaude. ... Respondent

Shri S.N. Sardessai, Public Prosecutor for the Appellant/State.

Shri Arun Bras D'Sa, Advocate for the Respondent.

CORAM: N.A. BRITTO, J.

DATE: 5TH AUGUST, 2004.

ORAL ORDER:

The respondent-accused having been tried and acquitted under Section 429 I.P.C. by the learned J.M.F.C., Ponda by Judgment dated 1.3.2004, the State has filed the present appeal against the said acquittal.

2. Admittedly there were no eye witnesses to the incident of killing by electric shock the 2 she buffaloes belonging to the complainant/first informant. The entire case of the prosecution had rested on two circumstances. The first circumstance was that the accused had earlier, two months prior to the incident, had threatened the said complainant that he would kill the animals by electric shock. The said

circumstance did not find favour with the learned J.M.F.C. and it has been pointed out on behalf of the accused that both the families were on talking terms prior to the date of incident and therefore there was no question of the accused having given any threats, two months prior to the incident. The second circumstance was that both the she buffaloes were found dead near the fencing surrounding the plantation of the said complainant which is otherwise stated to have been at a distance of about five to six metres from her house. There is no dispute that the cause of death as ascertained by P.W.5 was that the said two she buffaloes did die out of electric shock.

3. This is a case where two views of the matter were reasonably possible. The prosecution had not even made attempts to attach the wire by which the accused might have connected electric current from his own house to the aluminium wire which was part of the fencing. Being so and considering that the accused has been acquitted, it would not be correct for this court to substitute its own view for the view held by the learned J.M.F.C.

4. The appeal, therefore, is hereby rejected in limine at the stage of admission.

sl. **N.A. BRITTO, J.**